IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

C.A. No.1262/2007 in F.A. No.551/1990

State of Maharashtra

Vs.

Smt. Sushilaben wd/o Shri Shanabhai Patel and 3 others.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : **A.P. LAVANDE AND R. V. MORE, JJ.**
DATED : 31/08/2007

1. Heard Mr. De, learned counsel for the Applicant-M.J.P., Mr. A. M. Deshpande, learned AGP for the appellant and Mr. K.H. Deshpande, learned Senior Counsel with Mr. R.K. Deshpande, learned counsel for the respondents.

2. By this application, the applicant seeks leave to join as co-appellant in the appeal preferred by the State of Maharashtra.

3. State of Maharashtra by Notification dated 7th May 1987 acquired several lands for Water Treatment Plant at Chandrapur. The lands of the respondents were also also acquired in terms of the said Notification. The Land Acquisition Officer declared his award on 30/12/1989. The reference filed by the respondents was partly allowed. Aggrieved by the judgment and award passed by the Reference Court, State of Maharashtra has preferred First Appeal No.551/1990. The respondents have filed cross-objections seeking higher compensation.

4. It is the case of the applicant that it being acquired body was entitled to notice under Land Acquisition Act before the Reference Court and since no notice was given, the impugned judgment and award is liable to be set aside since the applicant has been deprived to substantiate before the Reference Court that the compensation granted by the Land Acquisition Officer was just and proper. It is further case of the applicant that the applicant ought to have been given an opportunity to lead the evidence before the Reference Court which has not been given and as such the impugned award is liable to be set aside.

Therefore, the appellant is entitled to challenge the impugned judgment and award by joining as co-appellant in the appeal preferred by the State of Maharashtra. In support of his submissions, Mr. De, relief upon the following decisions:-

1. AIR 1995 S.C. 724 (U.P. Awas Evam Vikas Parishad v Gyan Devi;

2. AIR 2002 S.C. 817 (Abdul Rasak and others Vs. Kerala Water Authority and others); and

3. (2004) 13 S.C.C. 125 (Regional Medical Research Centre, Tribals Vs. Gokaran and others).

5. Per contra, Mr. K.H. Deshpande, learned Senior Counsel appearing for the respondents submitted that the respondents have no objection, if the applicant is joined as respondent but the appellant cannot be permitted to be joined as co-appellant. According to Mr. Deshpande, the applicant had notice of proceedings before the Reference Court and also of the appeal filed by the State of Maharashtra. To substantiate the same, Mr. Deshpande invited our attention to several documents which have been placed on record by the respondents, as well as the application for stay filed by the appellant in which affidavit has been filed by the Executive Engineer. Mr. Deshpande

further submitted that since the applicant had knowledge of pendency of proceedings before the Reference Court and they had opportunity to lead evidence before the Reference Court, and the applicant having not availed of such opportunity is not entitled to join as co-appellant in the appeal preferred by the State of Maharashtra. According to Mr. Deshpande, the applicant has to make out case of prejudice for being joined as co-appellant. Mr. Deshpande submitted that although the applicant is the proper party in the reference in order to join as co-appellant, has to show that the Government has failed to protect its interest. According to Mr. Deshpande, the prayer of the applicant to be joined as co-appellant ought not to be granted.

6. Mr. Deshpande, learned AGP appearing on behalf of the appellant supported the submissions made on behalf of the applicant.

7. We have considered the submissions made by rival parties and perused the records and the judgments relied upon.

8. The Apex Court in U.P. Awas Evam Vikas Parishad (supra) has held that the local authority or acquiring body for whom land is being acquired

has a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation. The Apex Court has further held that local authority is a proper party in the proceedings before the Reference Court and is entitled to be impleaded as party in those proceedings in order to defend the determination of the amount of compensation by the Collector.

9. In Abdul Rasak's case (supra), the Apex Court has upheld the order of the High Court and remanded the matter to the Reference Court with certain directions. It is pertinent to note that in the said case although Notification under Section 4 of the Land Acquisition Act was published on 19.7.1981, and the Kerala Water Authority was constituted in the year 1984. The Apex Court up-held the order of the High Court remanding the matter on the ground that opportunity of adducing evidence was not given to the Authority. In the case of Regional Medical Research Centre, Tribals (supra) the Apex Court set aside an order passed by the High Court dismissing the application filed by statutory body on whose behalf the land was

acquired, to be impleaded on the ground that no notice was issued to the Authority. The High Court had dismissed the application, inter alia, on the ground the appellants were aware of the proceedings and as such they could not re-open the proceedings. Placing reliance upon the judgments in U.P. Awas Evam Vikas Parishad (supra) as well Abdul Rasak (supra) the Apex Court set aside the order passed by the High Court and referred the matter to the Reference Court with directions similar to those given in Abdul Rasak's case.

10. In view of consistent ratio laid down by the Apex Court in the above three judgments that acquiring body is entitled to be given a notice before the Reference Court and to lead evidence in support of the award passed by the Land Acquisition Officer. We find it difficult to accept the submission of Mr. Deshpande that the applicant should not be permitted to be joined as co-appellant in the appeal preferred by the Sate of Maharashtra. In the case of Regional Medical Research Centre, Tribals (supra) as well as Abdul Rasak's case (supra) the Apex Court remanded the matters to the Reference Court although the acquiring authority was aware of the proceedings

before the Reference Court. The ratio laid down in the above two judgments is squarely applicable in the present case. Mere fact that the Officers were aware of pendency of the proceedings before the Reference Court and the High Court is no ground to reject the prayer made on behalf of the acquiring body to be joined as party in the proceedings. In the above two cases, the Apex Court remanded the matters back to the Reference Court with certain directions. We see no ground to take different ground. We are unable to accept the submissions made on behalf of the respondents that the applicant has to make out a case of prejudice. In our opinion, the applicant is entitled to assail the judgment and award passed by the Reference Court and, therefore, they are entitled to be joined as co-appellant. It is also pertinent to note that the respondents have filed cross-objections claiming higher compensation. This is an additional ground on which the prayer of the applicant deserves to be granted.

11. In the result, therefore, the application is allowed. The applicant is permitted to be joined as co-appellant in the appeal preferred by State of Maharashtra. Amendment to the cause title to be

carried out forthwith by the appellant.

Application stands disposed of with no order as to costs.

JUDGE **JUDGE**

MLA.